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GENERAL COMMITTEES

Public Bill Committee

CHILDREN AND FAMILIES BILL

Seventh Sitting

Thursday 14 March 2013

(Morning)

CONTENTS

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Monday 18 March 2013

STRICT ADHERENCE TO THIS ARRANGEMENT WILL GREATLY FACILITATE THE PROMPT PUBLICATION OF THE BOUND VOLUMES OF PROCEEDINGS IN GENERAL COMMITTEES

The Committee consisted of the following Members:

Chairs: Mr Christopher Chope, † Mr Dai Havard

† Barwell, Gavin *(Croydon Central)* (Con)
† Brooke, Annette *(Mid Dorset and North Poole)* (LD)
† Buckland, Mr Robert *(South Swindon)* (Con)
† Elphicke, Charlie *(Dover)* (Con)
† Esterson, Bill *(Sefton Central)* (Lab)
Glass, Pat *(North West Durham)* (Lab)
† Hodgson, Mrs Sharon *(Washington and Sunderland West)* (Lab)
† Jones, Graham *(Hyndburn)* (Lab)
† Leadsom, Andrea *(South Northamptonshire)* (Con)
† Lee, Jessica *(Erewash)* (Con)
† Milton, Anne *(Lord Commissioner of Her Majesty's Treasury)*
† Nandy, Lisa *(Wigan)* (Lab)
† Nokes, Caroline *(Romsey and Southampton North)* (Con)
† Powell, Lucy *(Manchester Central)* (Lab/Co-op)
† Reed, Steve *(Croydon North)* (Lab)
† Sawford, Andy *(Corby)* (Lab/Co-op)
Simpson, David *(Upper Bann)* (DUP)
† Skidmore, Chris *(Kingswood)* (Con)
† Swinson, Jo *(Parliamentary Under-Secretary of State for Business, Innovation and Skills)*
† Timpson, Mr Edward *(Parliamentary Under-Secretary of State for Education)*
Whittaker, Craig *(Calder Valley)* (Con)

Steven Mark, John-Paul Flaherty, *Committee Clerks*

† attended the Committee

Public Bill Committee

Thursday 14 March 2013

(Morning)

[Mr Dai Havard *in the Chair*]

Children and Families Bill

Written evidence to be reported to the House

CF 26 Health Conditions in Schools Alliance
CF 27 British Academy of Childhood Disability
CF 28 CLIC Sargent
CF 29 Jane Raca, Author, "Standing up for James"
CF 30 Law Society of England and Wales
CF 31 Association of Professors of Social Work
CF 32 Home Education Advisory Service
CF 33 Nagalro
CF 34 Mencap

11.30 am

The Chair: I have a short administrative announcement to make. From next week, we will be meeting in Committee Room 12.

Clause 6

The Adoption and Children Act Register

Lisa Nandy (Wigan) (Lab): I beg to move amendment 9, in clause 6, page 4, leave out lines 27 to 35.

The Opposition support the Government's efforts to reduce delay, but we do not believe that speed should ever come at the expense of getting things right for children. We are therefore concerned about the impact of clause 6 and have tabled amendment 9 to ensure that a child is placed on the adoption register only when it has been decided that adoption is the right course of action for them, so before a court decision but after the local authority has settled on adoption as the plan. The Government's original proposal in "An Action Plan for Adoption: Tackling Delay" was to place a duty on local authorities to refer a child to the adoption register no later than three months after the decision to place the child for adoption, unless a match is being actively considered, and that was important to ensure that local authorities did not try to guard their own adoptive parents; but the clause goes much further.

In response to questions from the Lords Select Committee on Adoption Legislation, the Government indicated that the proposal could apply to children from their first week in care or to unborn children. TACT is concerned that placing a child on the adoption register before the decision that adoption is in their best interests

"places the desire for speed above the child's welfare".

We have tabled the amendment in that light. Seen in the context of clause 1, the provision potentially undermines children's ability to be reunited with their birth parents, because if a child is placed out of area through the adoption register, which clause 1 enables, it may prove incredibly problematic for the parents to maintain a relationship with them. As we said when debating that clause, we are concerned that that may mean that, by the time a case comes to court, a child who is happy and settled and who has not had an ongoing relationship with their birth parents may not be returned to the birth parents, even when that would have been in their best interests previously. We agree with the Children's Commissioner for England that, as drafted, the proposal is not based on the due legal process required by article 21 of the convention on the rights of the child.

We also share the Children's Commissioner's strong concerns about how the measure will work in practice and in particular the respect that will be afforded to children's privacy. Will the Minister tell us more about how much information about children will be made available and what checks will be carried out on those accessing the register? Both the Children's Commissioner and I are concerned about the potential for harm, especially given the point that she and other organisations have made that child abusers often target children through established channels.

The clause received no pre-legislative scrutiny, and as far as I am aware the regulations that accompany it are not yet available. That is quite significant. Given the clause's potential importance, the regulations should be made available to the Committee as soon as possible, so that we can consider the full impact. Like the Lords Select Committee on Adoption Legislation, we simply do not know what the impact will be, but given the serious risks outlined by many organisations, the Government ought to rethink their position in line with amendment 9, and redraft or amend the clause to ensure that speed does not come at the expense of children's welfare.

The Parliamentary Under-Secretary of State for Education (Mr Edward Timpson): It is a delight to see you back in the Chair, Mr Havard, for what I hope will be an extremely productive day for the Committee.

The aim of the Adoption and Children Act register has always been to minimise delays in finding suitable adoptive families for children, but the process of identifying potential matches through the register can be slow and enormously frustrating for children waiting to be adopted and for prospective adopters. For too long, adopters have been excluded from the process of matching, meaning that many potential matches may be missed. At this point it may help to quote Sir Martin Narey, who said:

"If we are to find the adopters we need to give homes to the 7,000 children with placement orders who are waiting for adoption, we need to be much more open-minded about those we approve and then give the adopters themselves a much greater role in finding the right child for them… Matching works best not when it is something done to the adopters…but"

when it

"involves them and trusts some of the chemistry in relationships."

By opening up the register so that approved prospective adopters can access it, we can significantly speed up the matching process, particularly for those children who may be harder to place. At the moment, despite the

chronic shortage of adopters, many prospective adopters wait months and sometimes years after being approved to be matched with a child. In my travels in my region of the north-west, I came across a couple who were waiting three years.

Allowing approved prospective adopters to access the register themselves would allow them to identify children with whom a social worker might never have matched them. That might be the case if, for example, children have complex needs or are part of a sibling group—children whom we have to make a strong effort to match and place. The evidence supports that view: it shows us that allowing adopters to play a more active role in identifying children means that approved adopters will often consider adopting children whom they would otherwise not consider, or be considered for, via traditional matching techniques. Professor Julie Selwyn from Bristol university, who has already been mentioned in relation to the adoption clauses and is one of the leading researchers in this area, agrees. She emphasises:

"There is a click…between the adoptive family and the child—something fits between them, and that something is not easily determined by social workers using a matching form with various categories and tick boxes."—[*Official Report, Children and Families Public Bill Committee,* 5 March 2013; c. 21, Q51.]

The importance of a more active role for approved adopters is already demonstrated in practice by the exchange days run by the register and local authorities, when social workers can meet approved adopters to share more details about the children who are waiting for homes. The register held 10 national exchange days between January 2011 and November 2012, and at those events, local authorities matched 154 children—118 groups of children. A total of 486 prospective adopters attended the events, so about one in four were matched with a child as a direct result of attending. That innovation was welcomed by the Lords Select Committee in its pre-legislative scrutiny report and by the British Association for Adoption and Fostering, which holds many of those activity days, as well as Barnardo's.

Of course, the safety of children and the privacy of their information are paramount, and I am glad that the hon. Member for Wigan raised that point. That is why we will put in place all the necessary safeguards to ensure that sensitive personal information about children and adopters is not compromised and is fully protected. The regulations that we make will set out the detail of how approved adopters can access the register and what information they will have access to, but I can assure colleagues now that the information available to approved adopters will not enable them to identify individual children. In addition, the changes will be piloted ahead of full roll-out, to ensure that we can understand in detail how to make the process work more effectively and that all the necessary safeguards are working in practice.

Lisa Nandy: Can the Minister tell the Committee when the regulations will be available in draft form, so that they can form part of our deliberations?

Mr Timpson: I am confident that the draft regulations will be available by the time the Bill reaches the other place. I am sure that their lordships will have plenty of time to consider them in detail before the Bill finds its way back to the House of Commons.

Clause 6 amends the Adoption and Children Act 2002 to allow for the inclusion in the register of prescribed information about children who are being considered for adoption by an English local authority. The intention is to enable details of children for whom the local authority is considering a fostering for adoption placement to be included on the register. Amendment 9 would prevent those children for whom the local authority is considering adoption from being added to the register.

I understand the concerns of the hon. Member for Wigan, who tabled the amendment. We discussed many of those concerns when we considered clause 1, but I urge hon. Members considering the amendment to bear in mind the following crucial factors. First, the evidence is clear: research shows that children's chances of adoption decline by almost 20% for every year of delay, and a child's age is one of the strongest predictors not just of whether the child will be adopted, but of whether that adoption will break down. It is clear that placing a child with his or her potential permanent carers early increases the chances of the placement being successful. A BAAF study following a sample of children who were adopted or in long-term foster care found that the later a child was placed with permanent carers, the lower the chances of improvement in relation to their emotional and behavioural difficulties.

Lisa Nandy: Surely the Minister accepts, though, that the chance of an adoption placement breaking down is increased if children for whom adoption is not the plan are being placed on the adoption register. That is the purpose of amendment 9—to ensure that children are placed on the adoption register only at the point at which it has been decided that that is the plan for them. I am sure that he, like me, would hate to deter potential adoptive parents from coming forward because they risk going through heartbreak when it is decided that to continue is not in the interests of a child whom they were keen to adopt.

Mr Timpson: I take a number of points from the hon. Lady's comments. First, we are united in trying to ensure that every child has the chance of a permanent placement being decided and followed through as quickly as possible, for all the reasons I have given about delay and the consequences for the individual child. The risk, as we discussed in relation to clause 1, is with the foster carers or prospective adopters, not with the child. That is where the risk should lie, and advance knowledge of that risk has not put off parents who are looking to adopt through the fostering for adoption route from following the process. Prospective adopters do not have to put themselves on the register.

Placing on the register children for whom the local authority is considering a fostering for adoption placement would maximise the chances of finding suitable foster carers who are also approved prospective adopters with whom the child may be placed. I believe that the safeguards are in place. In addition to the evidence base, I also understand that colleagues will want to be reassured about the way in which we propose to introduce the changes.

Bill Esterson (Sefton Central) (Lab): I understand the point about the risk being borne by the adults and think the Minister is right, but if there is delay due to alternatives

[Bill Esterson]

being considered—the point behind the amendment—is there not a danger that children could face exactly the sort of delay in getting a permanent placement that he has carefully explained he wants to avoid?

Mr Timpson: I am not sure whether the hon. Gentleman is referring to concurrent planning, where parallel plans are in place, or to fostering for adoption, where consideration is given to adoption as the permanent plan, having already passed the appropriate placement filter of the birth parents and family. The new arrangements would open up the register. At the moment there is a smaller pool of potential adopters that could be matched to each child. The idea is to open that up so that there is a wider prospect of a match, to break down the artificial barriers between local authorities.

Most importantly, the new arrangements we seek to introduce in no way undermine the due process around placing children in families. It will remain the case that a child cannot be placed for adoption without parental consent or without a court giving a placement order. I can also assure hon. Members that the details of children being considered for a fostering for adoption placement will be placed in a separate section of the register. That is to ensure that access is limited and open only to approved prospective adopters who have expressed a willingness to care for a child on a fostering for adoption basis. That is an important point to make at this juncture.

When the 2002 Act was introduced, the Adoption and Children Act register was designed to be used to assist placing children for purposes other than adoption, as well as for adoptive placements. The inclusion of children being considered for adoption on the register provides a way to realise that original design fully. More importantly, as I said to the hon. Member for Sefton Central, the changes will help local authorities to find foster carers who may, with parental consent or placement order from the court, be able to offer children a permanent home without the disruption that could be caused by multiple fostering placements, as has happened too often in the past.

I hope hon. Members are reassured about our proposals and I urge the hon. Member for Wigan to withdraw her amendment.

Lisa Nandy: I am grateful to the Minister for his response. Although some of the concerns I have raised remain, I am reassured by his commitments that children would be placed through the adoption register only with people willing to take part in fostering for adoption placements before it has been decided that that is the plan. I am also grateful for the assurance about the pilots, which will be important to minimise damage to adults and particularly to children, and to learn that the guidance will be available as soon as possible. We are keen to see that, especially by the time the Bill reaches the House of Lords, but perhaps sooner, if possible. Of course it is impossible to know how the arrangements will work, but on the basis of the assurances given by the Minister, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 6 ordered to stand part of the Bill.

Schedule 1

THE ADOPTION AND CHILDREN ACT REGISTER

11.45 am

Mr Timpson: I beg to move amendment 15, in schedule 1, page 116, line 14, leave out paragraph 11 and insert—

'11 (1) Sections 125 to 131 cease to have effect in relation to Scotland.

(2) Accordingly, in section 149 (extent), in subsection (4) omit paragraph (b).'.

I have already outlined the purpose of clause 6. Following commencement, the provisions in sections 125 to 131 of the Adoption and Children Act 2002, dealing with the Adoption and Children Act register, will extend only to England. I can assure hon. Members that in developing our proposals for the register, we have consulted carefully with our counterparts in the devolved Administrations. The Scottish Government will introduce legislation in the Scottish Parliament to put that country's adoption register on a statutory footing, and the Welsh Assembly Government plan to set up their own register as well. It is therefore important that the legislation is absolutely clear that sections 125 to 131 of the 2002 Act will extend only to England. This minor amendment seeks to achieve just that by clarifying—putting beyond doubt—the position in relation to Scotland. Our officials have discussed and agreed the amendment with officials in the Scottish Government. I hope that hon. Members agree that the amendment is necessary and I urge them to accept it.

Amendment 15 agreed to.

Schedule 1, as amended, agreed to.

Clause 7

CONTACT: CHILDREN IN CARE OF LOCAL AUTHORITIES

Lisa Nandy: I beg to move amendment 10, in clause 7, page 5, line 27, at end insert—

'(2A) In subsection (1), after paragraph (d) insert—

"(e) his siblings (whether of the whole or half blood).".'.

We share the Government's view that, sadly, it is not always in the interests of children's safety or welfare to maintain contact with their birth families. Research indicates that, for the majority of children, contact is the right decision, but it also highlights clear instances where it is not. Children feel very strongly about contact. It is vital that they are engaged in the decision about it, understand that decision and have the opportunity to make their views clear. That is essential because, as the Government recognised in their consultation last year, contact cannot always be regulated: children may be sought out, especially given the prevalence of social media, or may take it upon themselves to seek out relatives through the same routes. It is vital that contact is supported, because even where it is in the child's best interests, it may well also be difficult; in fact, support or the lack of support can tilt the balance as to whether contact is in the child's best interests or not.

We agree with the Children's Commissioner for England that clause 7 is designed to clarify the present position, and although it is not entirely clear why its inclusion is

necessary, we support the principle behind it. However, we are concerned that the clause allows for regulations on when contact with family members is consistent with safeguarding and promoting the child's welfare. We agree with the Children's Commissioner for England and the Family Rights Group that that is over-prescriptive, seeking to prescribe the best interests of individual children whom the Committee has never and will never meet.

As far as I am aware, the regulations have not yet been produced. Will the Minister tell us why not, given their centrality to the impact that the clause will have in practice? When will the draft regulations will be produced? The clause permits the Secretary of State to put the regulations before the House under positive resolution, which worries me simply because it will give us the option either to accept or to reject the regulations in their entirety, without looking closely at the detail.

It is partly as a consequence of that lack of clarity that we have tabled amendment 10, which would ensure in particular that siblings and half-siblings can maintain contact with one another. We share the view of children that separation from siblings can be needless and can cause long-term anguish. Currently, 63% of children in the care system whose siblings are also in care are separated from them. Children consistently raise the issue: on Tuesday, I had an online chat with young people involved in the NSPCC's "N-Spire" programme, one of whom told me a heartbreaking story about what it meant to her and would continue to mean. According to the children's rights director, 86% of children in care think it is important to keep siblings together. Our amendment's purpose isto ensure that siblings are not overlooked and to make sibling contact a priority in social work practice. Those are often the longest relationships of a child's life. We hope that the Government will consider supporting the amendment.

Mr Timpson: Amendment 7 would add siblings to the list of people in section 34(1) of the Children Act 1989 with whom a local authority is required to allow a child in their care reasonable contact, where that contact is consistent with safeguarding and promoting the child's welfare.

I thank the hon. Lady for the way in which she presented her amendment and I sympathise with the intention to promote the importance of contact between a child in care and their siblings. I am acutely aware of the academic evidence, from Jenifer Lord and Sarah Borthwick in particular, which confirms that when contact with siblings works well, it can be beneficial to the children involved. As she quite rightly points out, a sibling relationship is often one of the most enduring through life, not just through childhood, and that is something that we have to consider when making decisions in the interest of each individual child.

The key issue here, and very much at the heart of the clause, is to ensure that every decision made is in the best interests of that individual child, as opposed to a sibling group. It may be that, in some circumstances, it is in a child's best interests to have ongoing, perhaps regular, direct or indirect contact with a sibling who does not live with them, but there are occasions—I have seen this myself within our own fostering environment and in the courts—where there are siblings who have, often through no fault of their own, a dysfunctional or destructive relationship. It would be against the interests of those siblings to continue a relationship that could cause them difficulties in the future.

Although I understand the hon. Lady's desire to promote contact between children in care and their siblings, section 34 of the 1989 Act deals with contact between children in care and either those persons with parental responsibility for them, or those with whom the child lived, by virtue of a court order, immediately before being taken into care. That may include a sibling in circumstances, for instance, where an older sibling may have a residence order or be a guardian or special guardian of the child. As I said, sibling relationships are varied and are often complicated, and it is sometimes the case that siblings live apart from each other, potentially for an extended period, even before one of them is taken into care.

Bill Esterson: I know that the Minister is aware of the views of adults who were formerly children in care. They consistently say that one of their biggest regrets was not having been in care with their siblings or not having had contact with their siblings. How does that evidence fit with what he is saying?

Mr Timpson: As the hon. Gentleman will know, either where children are taken into care with their siblings, or where an individual child is taken into care but their siblings do not go into care with them, decisions have to be made about what is in the best interests of each of those children, even if they are siblings. I remember being involved in a very sad case in which a group of four or five brothers and sisters had been exposed to inappropriate sexualised behaviour in the family home; as they became teenagers, some started to replicate that behaviour to which they had been exposed. For those children, to remain together when in care would have done them more harm than putting them in separate placements. However, that did not prevent the local authority from having to consider what form of contact should continue between those siblings where that would be safe, bearing in mind that, as they grow older, their relationship may have some importance in trying to recognise what happened to them when they were growing up. In making such difficult decisions, social workers must consider those factors carefully and in detail. Ultimately, the decision must still be in the best interests of each individual child, and we cannot supersede that by saying that a child should always live with a sibling or to have ongoing contact with a sibling.

I reassure hon. Members that existing legislation provides for sibling contact. Paragraph 15(2)(c) of schedule 2 to the Children Act 1989 places a duty on local authorities to "endeavour to promote contact" between all looked-after children, not just those in the care of the local authority, and "any relative"—that would include any siblings, both whole or half-blood—

"friend or other person connected with"

the child, unless to do so would not be reasonably practical or consistent with the child's welfare. Section 34(11) of the 1989 Act also makes it clear that before making a care order, the court must:

"consider the arrangements which the authority have made, or propose to make, for affording any person",

including siblings,

"contact with a child to whom this section applies; and invite the parties to the proceedings to comment on those arrangements".

[Mr Timpson]

That provides ample opportunity for sibling contact to be properly considered.

In the Bill, we have specifically ensured in clause 15, which I look forward to discussing later, that the court will continue to consider such contact arrangements. In addition, a sibling of a child in care can apply to a court for contact, as long as they have received permission to do so under section 34(3) of the 1989 Act. Any child in care can also make an application without permission to the court for contact with their siblings under 34(2) of that Act.

Over and above those provisions in primary legislation, additional provisions in regulations ensure that local authorities consider and review contact arrangements with siblings. The Care Planning, Placement and Case Review (England) Regulations 2010 place a duty on local authorities to include in a child's care plan details of how the local authority will meet the child's needs in relation to family relationships, including any arrangements for promoting and maintaining contact with siblings under paragraph 15 of schedule 2 to the 1989 Act. If a child has a sibling who is also looked after but they are not placed together—a scenario that I discussed with the hon. Member for Sefton Central—the care plan must set out the arrangements made to promote contact between them. The regulations also state that the care plan must be regularly reviewed, which allows for contact arrangements to change as the child's circumstances, needs and interests change.

We will make the draft regulations available for the Lords' scrutiny of the Bill. We have explained our intention in that regard in the policy statement, which has been sent to the Committee. In the light of those assurances, I hope the hon. Member for Wigan will withdraw the amendment.

Lisa Nandy: I think it is entirely inconsistent to argue that contact with siblings should not be in the Bill but parental involvement should be, as per clause 11, but I am grateful to the Minister for giving the Committee some assurances, albeit limited ones, about sibling contact. In the expectation that he will continue to consider how we can ensure that fewer children are needlessly separated from their siblings in the care system, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 7 ordered to stand part of the Bill.

Clause 8

Contact: post-adoption

Mr Timpson: I beg to move amendment 16, in clause 8, page 7, line 46, at end insert—

'(3A) In section 96(3) of that Act (section 95 does not prohibit payment of legal or medical expenses in connection with applications under section 26 etc) after "26" insert ", 51A".

(3B) In section 1(1) of the Family Law Act 1986 (orders which are Part 1 orders) after paragraph (ab) insert—

"(ac) an order made under section 51A of the Adoption and Children Act 2002 (post-adoption contact), other than an order varying or revoking such an order;".

(3C) In section 2 of that Act (jurisdiction of courts in England and Wales to make Part 1 orders: pre-conditions) after subsection (2B) insert—

"(2C) A court in England and Wales shall not have jurisdiction to make an order under section 51A of the Adoption and Children Act 2002 unless—

(a) it has jurisdiction under the Council Regulation or the Hague Convention, or

(b) neither the Council Regulation nor the Hague Convention applies but the condition in section 3 of this Act is satisfied."'.

The Chair: With this it will be convenient to discuss Government amendment 17.

Mr Timpson: Amendments 16 and 17 make several minor consequential changes to legislation. They are necessitated by the orders dealing with adoption-related contact in proposed new section 51A of the Adoption and Children Act 2002, which clause 8 will insert. The amendment to section 96 of the 2002 Act will ensure that new section 51A orders are treated in the same way as other orders under the Act. The consequential amendments to the Family Law Act 1996 will ensure that the new section 51A orders are treated in the same way as orders made under section 8 of the Children Act 1989, which they replace, in relation to certain types of adoption-related contact. The amendments to the Armed Forces Act 1991 will do likewise to that Act, to ensure that section 51A orders trigger the same response as section 8 orders in relation to the children of service personnel. I stress that the consequential changes we are proposing through amendments 16 and 17 would bring section 51A orders, which replace section 8 orders in relation to certain adoption-related contact, in line with orders under section 8 of the Children Act 1989 or, in the case of the Adoption of Children Act 2002, other orders made under that Act. I hope hon. Members will agree that the changes we propose are necessary and desirable and so I urge them to support the amendments.

Amendment agreed to.

12 noon

Amendment made: 17, in clause 8, page 8, line 4, at end insert—

'(5) In section 17(4) of the Armed Forces Act 1991 (persons to be given notice of application for service family child assessment order) before paragraph (e) insert—

"(db) any person in whose favour an order under section 51A of the Adoption and Children Act 2002 (post-adoption contact) is in force with respect to the child;".

(6) In section 18(7) of that Act (persons who may apply to vary or discharge a service family child assessment order) before paragraph (e) insert—

"(db) any person in whose favour an order under section 51A of the Adoption and Children Act 2002 (post-adoption contact) is in force with respect to the child;".

(7) In section 20(8) of that Act (persons who are to be allowed reasonable contact with a child subject to a protection order) before paragraph (d) insert—

"(cb) any person in whose favour an order under section 51A of the Adoption and Children Act 2002 (post-adoption contact) is in force with respect to the child;".

(8) In section 22A(7) of that Act (persons who are to be allowed reasonable contact with a child in service police protection) before paragraph (d) insert—

"(cb) any person in whose favour an order under section 51A of the Adoption and Children Act 2002 (post-adoption contact) is in force with respect to the child,".'.— *(Mr Timpson.)*

Question proposed, That the clause, as amended, stand part of the Bill.

Lisa Nandy: We broadly support the clause, which enables the courts to allow or prohibit contact with birth families at the adoption order stage and post adoption. Our chief concern is to ensure that decisions are taken in the interests of children, not adults, be they the birth family or the adoptive parents. Can the Minister assure us that the children's views will be taken into account, and that due attention will be given to the ongoing relationship between siblings? It is not clear why there may be provision for the court to make pre-emptive "no contact" orders but not orders for contact, which would allow the child to make it clear to the court that they wished to have contact with a person, such as a sibling, where no party had made such an application. That point is made forcefully by the Children's Commissioner.

The House of Lords Select Committee on Adoption Legislation is concerned that the clause might present more practical barriers to sibling contact, and suggests that the ability of birth parents or siblings to seek leave to make a contact application may be constrained in practice. I would be grateful if the Minister could provide some assurances about this. Can he also assure us that this is not a signal to local authorities and adoption agencies that prospective adoptive parents no longer need be open to the possibility of contact, which can play a significant part in children's ongoing identity and their transition into a new family?

Given that ongoing contact with siblings can sometimes be very difficult for adoptive parents to manage, what support will be in place for them to ensure that it continues? The Adoption and Children Act 2002 focused on contact in part to reflect the fact that children now come into care and are adopted at an older age—50 years ago, the vast majority of children being adopted were babies—so their ties may be stronger, and they may have relied on their siblings throughout their early lives. That is the root of my concern, and I should be grateful for assurances as we consider whether the clause should stand part of the Bill.

Mr Timpson: I welcome the hon. Lady's broad support for the clause, and the points that she has raised in order to tease out the detail. If I am unable to deal with every issue that she raised in that strict, staccato and pithy way, I will endeavour to do so after the sitting.

Clause 8 introduces new provisions into the Adoption and Children Act 2002 in relation to contact arrangements between adopted children and their birth parents, other relatives, former guardians and certain others, from the point of the adoption order onwards. Many adoptive parents recognise that contact between an adopted child and their birth family or former guardians can be of continued benefit to the child. I reassure the hon. Lady that the clause is not intended to suggest to prospective adopters that there is a carte blanche approach to no contact in any future adoptive placement. Contact between an adopted child and their birth family can often help their development and enable them to gain knowledge and information about their family history, life story, inherited traits and reasons for being adopted. I know from my own family how important understanding identity can be in the context of a new adoptive future.

Informal contact arrangements with the child's former family are often allowed, and there is usually no need for recourse to the courts to make formal contact arrangements. However, it is right that formal provisions should exist to determine such contact in the minority of cases in which that is needed. Section 8 of the Children Act 1989 already makes provision for contact orders, but the 1989 Act also deals with a variety of other things, such as contact arrangements when parents separate or divorce, and orders including residence orders. As a result, the existing provisions do not work as we want them to in relation to adoption and, in particular, to enforceable orders of no contact. Bespoke provisions are needed to deal specifically with contact arrangements that relate to the child's adoption, and that is what the clause provides.

Bill Esterson: With regard to contact, the interests of the child will, of course, come before anybody else's interests. From what the Minister said, I am not clear whether the clause will amend contact arrangements for the birth family or the adoptive family taking into account the principle that the child comes first. I would be grateful if he cleared that up, because as with all these judgments, there is a very fine line.

Mr Timpson: I understand the hon. Gentleman's point. It is not a choice between the birth family and the adoptive family; it is about the child, as he rightly pointed out. The Adoption and Children Act 2002 requires the court's decision to be in the best interests of the child, and to take into account their wishes and feelings. The clause says that it is right that adoptive parents should be in the driving seat when determining contact arrangements in the vast majority of cases. As he knows, adoptive parents assume full legal parental responsibility for the child. However, the arrangements that are signed off by the court still have to take into account the views of the birth parents, and, over and above that, those of the child. That is why, in many cases where there is a placement order or an adoption order, there is some form of ongoing contact. However, we do not want contact to be used as a way of gaining the consent of a birth parent to a placement order or adoption. It has to be seen as a decision that is made once the initial determination has been made. That is something that the clause will help to ensure.

We have to acknowledge that the issue of contact can be difficult for adoptive parents. It can threaten their sense of family identity and can cloud their judgment about whether contact is beneficial. The hon. Member for Wigan talked about blogs and other social media, and as we are making such good time I will take a moment to read a blog post from a mother—this is from Community Care's blog—who has adopted two children. On the issue of contact, she said this:

"My children do not have contact with their birth families due to safety concerns. There was a time, however, when I was expected to write optimistic, untruthful letters and, in return,

[Mr Timpson]

receive denial and vague intimidation. I was expected to protect the birth family from the dark and tragic truth being played out in our home and they were allowed to write whatever they wanted. It was only when my eldest child started making horrific disclosures that the letter writing really became untenable. He wanted nothing to do with his birth family at the same time that I was supposed to be writing about him, to them. I began to question whose rights and interests were best being served."

She goes on to say:

"It's been some time since we talked about contact in our family, and so yesterday I broached it with my son…He reached for a pen and this is what he wrote: 'I think that they shouldn't. It brings back memories and could make them incredibly unsettled and it could make them feel unsafe, especially if it is against their will.'"

She goes on to say:

"I don't know if his views will change, but I would take steps to resume contact if he wanted it. It would never force me to question my role in his life. It's only ever been about what is best for him and I'm glad the new Act will give him a voice."

That is a powerful illustration of some of the difficulties that adoptive parents face, and the dilemma of whether there should be ongoing contact. In these cases, birth relatives, former guardians and certain other people who have formed a relationship with the child prior to their adoption should be able to ask the court to put in place formal contact arrangements, as they can under existing legislation. I think that deals with the point that the hon. Member for Sefton Central made about the role that the birth family still has in the decisions.

Bill Esterson *rose—*

Mr Timpson: I see that the hon. Gentleman is champing at the bit, so I will let him have another go.

Bill Esterson: I am grateful to the Minister, because the information that he read out backs up the experience of families I have met, as well as my personal experience. I am pleased that he is saying that the child's interests and wishes regarding contact will be protected, because some children will want contact and some will not, for some of the horrendous reasons to which he alluded. That is absolutely right, and I thank him for his assurance.

Mr Timpson: As ever, the hon. Gentleman speaks with authority on this issue, and I welcome his continued interest and engagement in trying to improve the lives of children going through the adoption process.

Clause 8 provides for specific adoption-related orders prohibiting contact—or "no contact" orders—to be made by the courts. That may be appropriate where, for example, unsolicited, harmful and disruptive contact is taking place between an adopted child and their birth family or former guardians after adoption. I spoke about social media; they make that contact more difficult to manage, and that is another motivation behind the clause.

The clause also provides for such orders to be made at the point of the adoption order. That may be appropriate if disruptive contact has been occurring earlier in the adoption process. The new order would allow adoptive parents, or the adoptive child themselves, to apply to the court to prevent or stop such contact. Of course, it will not be appropriate for these prohibitive orders to be made in all cases; we would expect the court to make such orders only where it can be shown that contact is or will be disruptive to the adoptive family, or harmful to the child. In deciding whether to make an order, the court's paramount consideration must still be the child's welfare throughout his or her life.

We have ensured that as well as clear provisions for adoptive parents to apply for court orders prohibiting contact with their child's birth relatives and others, there is provision for the same people to apply to the court for contact orders where they feel it is necessary, and where such contact would genuinely be helpful and beneficial to the child. I therefore commend the clause to the Committee.

Question put and agreed to.

Clause 8, as amended, accordingly ordered to stand part of the Bill.

Clause 9

Promotion of educational achievement of children looked after by local authorities

Bill Esterson: I beg to move amendment 2, in clause 9, page 8, line 15, at end add—

'(3D) A person appointed by a local authority under subsection (3B) shall be responsible for oversight of the way in which pupil premium for children looked after by that authority is spent.'.

The Chair: With this it will be convenient to discuss amendment 18, in clause 9, page 8, line 15, at end add—

'(3D) A person appointed by a local authority under subsection (3B) is responsible for promoting the educational attainment of children in all schools in the local authority area receiving public funding, including Academies.

(3E) A person appointed by a local authority under subsection (3B) has responsibility for allocating the pupil premium for the education of looked after children paid to the local authority pursuant to section 14 of the Education Act 2002.'.

Bill Esterson: This is a probing amendment to examine the way that clause 9 tries to strengthen the role of the virtual head teacher, and whether there are ways that that can be enhanced with the pupil premium. Currently, the pupil premium can be spent pretty much as the school sees fit and would not necessarily follow the individual child. Amendment 2 seeks to explore whether there is a way for the virtual head to have some responsibility for and involvement in how the money is spent, so that we can achieve what the clause title states and promote the educational achievement of looked-after children. Getting that improvement has been a very difficult challenge for many years, so anything that we can do to achieve it will be welcome. That is what my amendment is for, so I am interested in how the Minister envisages ensuring that the money for looked-after children in the pupil premium is best spent, and how the virtual head could address that.

I also want to speak to amendment 18, tabled by my hon. Friend the Member for Wigan, which is about the balance between responsibility and the power to intervene in academies. I have a concern about how academy legislation is framed; although local authorities and

virtual head teachers have responsibility for and a duty to all children, they do not have the power to intervene in academies, which, in this respect, are independent schools—they are independent of local authorities, and the only person who can intervene directly is the Secretary of State. There are questions arising from the amendment for the Minister to answer. How does he think local authorities and, in particular, virtual head teachers will carry out the intention behind the clause and intervene in academies to ensure that they discharge their duties if academies do not co-operate?

12.15 pm

Clause 9 seems to have come out of the "Education Matters in Care" report by the all-party group on looked-after children and care leavers, which, at the time, was chaired by the Minister, with the shadow Minister as vice-chair. All credit to both of them, and to other members of the group, for publishing the report.

Will the Minister clarify the evidence behind the statements in the report and his decision to include the clause in the Bill? There are many virtual head teachers, and have been for some time. There was a statutory direction under the 1970s legislation, which has been continued, that requires directors of children's services to improve the educational attainment of looked-after children. The recommendation that there should be virtual school heads has been around for some time. I am interested in whether any evidence suggests that that is not happening to the extent that is needed. How will the Minister's proposals improve and build on that? My experience of virtual head teachers has been good. I am keen to hear how the clause will improve matters; if it does, that will be a good thing.

Lisa Nandy: We tabled amendment 18 to ensure that the duty included children in academies and to make virtual head teachers responsible for allocating the pupil premium to looked-after children. As my hon. Friend the Member for Sefton Central said, these are probing amendments.

We warmly welcome the provision, which is one of few focusing on children in the care system, and which, as my hon. Friend said, was recommended in the all-party group's report. Given that the Minister was chair of the group and I was vice-chair at the time, it is not a huge surprise that we warmly welcome the provision.

We know that outcomes for children in care are still not good. As we have no real disagreement with the provision, I do not wish to say more than that we ought to do better by those children. Also, I will place on record something that is often lost from the debate: the current achievements of children who leave care may represent significant progress, both for that child and for the people who have supported them, given the adverse circumstances that they have had to overcome. It is absolutely right that we celebrate their achievements and the achievements of the people who have supported them, while ensuring that we provide more help and that we aim to do better for and by the children.

Amendment 18 would make the duty apply in two circumstances. First, if a child is looked after by borough A but has been placed in borough B and attends school there, will the virtual head teacher still have oversight? I would be grateful for an assurance on that. Secondly, we want to ensure that virtual heads will have the same responsibility and oversight for children in academies and free schools as children in other schools.

We share the Minister's view that the independent oversight and expertise of a virtual head teacher sitting in a local authority is important. We see no reason why children in one type of school should be excluded from, or receive a lesser service than, children in other types of school. Will the Minister clarify that that will not be the case, and that academies and free schools, which have the same legal basis, will be covered?

Lucy Powell (Manchester Central) (Lab/Co-op): My hon. Friend raises a good point about this important clause. While virtual heads are a fantastic move forward, there is still an issue about looked-after children moving from authority to authority. The clarification that she seeks—to ensure that virtual heads have a remit that goes across local authorities—is critical, because for most looked-after children in care, especially older children, disruption to their education plays a key part in why their achievement is that much lower than that of other children.

Lisa Nandy: That is an extremely important point, and I hope the Minister will respond to it in his speech. Broadly speaking, the amendment would ensure that the provisions cover all looked-after children to as full an extent as possible. On that point, it is also important to recognise, given that we want to encourage young people in care to go on to further and higher education, that they may need oversight from the virtual schools head up to the age of 25. I would be grateful if he could tell us whether he envisages that strategic oversight being extended to children who have been in the care of a local authority and go on in education until 25.

One in six secondary schools are now academies, and that number is rising. Academies did not exist when the Children Act 1989 was passed, so they are not mentioned in it, but that is why I am seeking this clarification. The success of a virtual school head rests on close co-operation between them and the schools involved, but I am not clear by what mechanism a virtual school head could get a non-co-operating academy school to co-operate. I would be grateful if the Minister could clarify by what mechanism a virtual school head could intervene in an academy school.

On the amendment in the name of my hon. Friend the Member for Sefton Central, the all-party parliamentary group report also recommended that virtual school heads should control the pupil premium. I do not want to pre-empt what the Minister is going to say, but both he and I came to the conclusion on that report that the success of the virtual school head rests on them having a very good relationship with the school involved. It would be preferable if that relationship was supported and nurtured, rather than the virtual school head having a separate power. I would be interested to know what he thinks about that. Either way, does he accept my hon. Friend's amendment to allow the virtual school head to control that element of the pupil premium? Will he make a commitment to revisit this in 18 months' time, specifically in relation to looked-after children—perhaps through an Ofsted thematic inspection report or some other mechanism—to see whether that is right or whether additional measures are necessary to enable the virtual school head to control the pupil premium?

[Lisa Nandy]

In the evidence pack that the Government made available to the Committee alongside the Bill, it says that regular feedback from the virtual school head regional networks will help us to monitor the effectiveness of the legislation. Perhaps the Minister could use that information to assess and report back on whether the provision is having the intended effect or whether stronger measures, such as that in the amendment, might be important.

Mr Timpson: I am not sure it happens often in Committee that the Minister and the shadow Minister propose and second—albeit with some probing elements—a policy that they both developed outside of the corridors of power, and then find themselves in the position to be able to follow it through. Certainly from my point, and I hope from that of the hon. Member for Wigan, it is a huge pleasure to be able to move the clause and speak on the amendments.

The provision is an significant step forward in recognising the importance of education for children across our whole school environment, and particularly for the most vulnerable and those who find themselves in the care system. It recognises that by adding a sixth role to the five statutory roles that local authorities have. The provision recognises the huge importance that local authorities and others must place on providing children in care with the highest prospect of achieving their educational potential.

I am grateful to the Opposition for their warm response to the clause. Absolutely, we should celebrate the success of those children who are in care and who already go through our education system and do amazing things when they leave and go on to either further or higher education or into employment. There are many inspiring stories that I have come across, and I am sure that the same is true for other members of the Committee, but we want to see more of them, and that is the thrust and motivation behind the clause.

As the hon. Member for Sefton Central said, all local authorities in England are already under a duty to promote the educational achievement of the children whom they look after wherever they are placed. Every local authority now has a designated person responsible for leading on the education of looked-after children, but the practice, as we know, is still patchy and not every designated officer, whether or not they are formally called a virtual school head, has the same role. There are some strong examples of excellent virtual school heads who are making a considerable difference to children in care in their local authority area. None the less, there are other areas where there is work to be done. Clause 9 strengthens that duty, and despite the progress that has been made, looked-after children's attainment still remains poor, and the attainment gap with unlooked-after children is unacceptably wide. The faster and more significant progress that needs to be made must start sooner rather than later.

Bill Esterson: How many authorities have a virtual school head and how many do not?

Mr Timpson: I do not have the exact figure in front of me, but the vast majority of local authorities have some form of virtual school head or a virtual school arrangement. *[Interruption.]* I am told that it is around 152, so I was correct in my overall assessment that it is the vast majority, but the virtual heads come in all sorts of shapes and sizes and their clout across local authorities at strategic level and across the school environment is variable. Putting their role on a statutory footing will ensure that that clout is spread more widely across all local authority areas. That is why clause 9 requires a local authority to appoint at least one person who is employed by that or another authority to discharge the duty placed on it by virtue of section 22(3A) of the Children Act 1989. The duty placed on local authorities under that section is one that applies to all the children they look after, regardless of where they are placed or where they go to school. That is relevant to the amendment and the challenge in relation to academies.

The duty is placed on the local authority as a corporate parent and it applies in exactly the same way wherever the child is being educated regardless of whether the school is maintained by a local authority or is an academy. It was suggested to me that even Hogwarts would qualify for this, and if Hogwarts existed then it would. Academies can be held to account through the academy model funding agreement. That makes the position clear. The latest funding group is published on my Department's website.

On the pupil premium and how it is spent, the Academy Trust is required to publish, in each academic financial year, information relating to the amount of the pupil premium allocation that it will receive during the academic financial year, what it intends to spend it on and what it spent it on in the previous year. It will also publish the impact on educational attainment arising from expenditure of the previous academic financial year's pupil premium. There are safeguards and conditions in place to monitor how the pupil premium is spent on looked-after children. The remit of the virtual school head goes across all looked-after children who are in their local authority area, but it does not go across local authority areas; they are the virtual school head for a single local authority. The hon. Members for Sefton Central and for Wigan will recognise the role of the virtual school head networks that have been set up. I believe that there are now nine across the country. Having visited the north-west regional virtual school head network, I can say that there is already a well formed exchange of information and of roles across local authorities. We need to build on that, so that as children move from one local authority to another they are tracked properly, and a line of communication is open to what will be a full network of virtual school heads across the country, who will be able to fulfil that role.

Bill Esterson: The point was put to the Select Committee by Michael Wilshire that there is no right of intervention by local authorities. The point I was making earlier was that that applies to virtual head teachers with respect to looked-after children. The review that will be part of the funding agreement is not the same thing as a right to intervene if an academy is not co-operative. How does the Minister see the arrangements working without the need to go to the Secretary of State, in that event?

12.30 pm

Mr Timpson: Of course, academies, like every school, are subject to Ofsted inspection, part of which will be an inspection of whether they fulfil their duties to

children in the school who are in care. That will be a consideration for Ofsted when it determines the school's performance, particularly as it is set out within the funding agreement.

I am confident that there are mechanisms to hold academies to account for the educational provision that they provide for looked-after children, but of course I shall want to continue to be satisfied of that, and will continue to have conversations with Ofsted. When the virtual school heads are on a statutory footing we will be able to see whether they have access to what they need. I have not had any evidence to suggest to me that there is currently any deep-seated difficulty with those who perform the function without being on a statutory footing; but if the hon. Gentleman has evidence to that effect, I shall happily look at it.

Lisa Nandy: One of our concerns is that Ofsted reports are all very well but can take some time. If an academy school does not work co-operatively with the virtual school head to boost attainment, it may be too late for the child. Can the Minister envisage any circumstances involving a virtual school head flagging up concerns and being unable to get the school to take them seriously, in which the Secretary of State would intervene?

Mr Timpson: We are moving into a wider debate about veracity in relation to the accountability of academies. Under section 10 of the Children Act 2004 there is a duty for all schools, including academies, to co-operate with local authorities, and they will be judged against that in carrying out their statutory duties.

Let us not forget that academies also have a designated teacher under the statutory guidance, which applies to them too. The Secretary of State has powers of intervention for all schools, if a point of inadequacy in delivery of education is reached. The decision whether to intervene at any level must be considered on a case-by-case basis.

We should be careful how we think about the statutory role of the virtual school head and not look upon it as insufficient for the raising of the profile, status and focus of looked-after children and their education in a local authority area. We shall want to monitor the effects and have already had an Ofsted report. There has also been an Ofsted report on the impact of the pupil premium, which will be kept under review.

There is still work to be done to establish how virtual school heads can be as effective as possible; but I am confident, and am sure that the hon. Lady will agree, that putting them on a statutory footing will be a significant step forward in increasing the focus on what we all want—that children in care should leave education having achieved the best they can.

Annette Brooke (Mid Dorset and North Poole) (LD): I support the clause, and have seen some excellent work by virtual head teachers. I seem to recall that a large proportion of children who come into care are about 13 or 14. I think they do remarkably well to do as well as they do at 16. Clearly, some young people who have had a bad experience at 13 and 14 will need support beyond 18. Will the Minister clarify whether the virtual head teacher continues supporting young people in further education, if that is appropriate, or if there is more support at a higher age than 18?

Mr Timpson: I am grateful for my hon. Friend's support for the clause and for her concern for children whose progress through their education, perhaps because of their pre-care experience and other emotional and behavioural difficulties that come from that, may not be at the same speed and rate as some of their peers. Of course, other elements and policies are being introduced by the Government on the raising of the participation age, including keeping maths as a compulsory element all the way through, up to 18. That will help to assist some children who are progressing at a slower rate. There are some good examples of children moving out of school, perhaps on to further or, we hope, higher education. For instance, in Ealing children in care are achieving well in moving on to higher education, through strong support from the council. Ealing has raised the level of children in care who go on to university from 7% to around 20%. That is a significant achievement.

There are already statutory elements to support for children leaving care, to ensure that they continue to get support into education. For instance, a personal adviser—we have increased the age at which those are available from 21 all the way up to 25—should, through the pathway plan, ensure that a young person gets the support that they need. The support may not be educational; it may be support wrapped around education, to provide the young person with the tools that they need to progress in the way that we all want to see.

The current position is that the virtual school head works during the young person's period of compulsory education, although there is nothing to stop local authorities, as already happens in East Sussex, for example, widening the scope of that role, if they want to do so. Nothing in the clause prevents them from doing that. We will continue to review the impact of the virtual school heads. I want them to be a real beacon of achievement for children in care, and as they move on into adult life.

Because virtual school heads will be on a statutory footing, and because local authorities already have a duty to provide the education for children in care and have to discharge that duty, they will be in a stronger position to fulfil many of the elements that I am sure my hon. Friend agrees provide the support necessary for them to reach their full potential. I am grateful for her support for the clause.

Extending the virtual school head role to all children attending schools in an area that receive public funds is the thrust behind amendment 18. However, extending the role of the

"person appointed by a local authority under subsection (3B)"

to every child would have the danger of diluting the role of the virtual school head to such an extent that they would not be able to do as much meaningful work as we would like them to do. Directors of children's services, as I said to my hon. Friend, already have an overarching education function under section 13 of the Education Act 1996, to promote high standards and the fulfilment of potential. That function extends to all children in the authority's area, regardless of the type of school they attend. That relates to our discussion a few moments ago. The amendment is limited to children attending certain schools; I am not sure whether that was the intention of the hon. Member for Sefton Central, but that is how it reads.

[Mr Timpson]

We have had some debate already about the pupil premium, in relation to amendment 2 and the second part of amendment 18. I have mentioned ways in which that is being monitored, to ensure that it is reaching the parts that we want it to reach. The principles on which the amendments are based closely resemble, perhaps not surprisingly, some of the recommendations from the report that the hon. Member for Wigan and I had the pleasure of putting together and that the all-party group on looked-after children and care leavers published. Recommendation 3, which I am sure is imprinted on her brain, proposes that virtual school heads should have control of the pupil premium for looked-after children. I was, as has already been pointed out, the chair of that all-party group, and the report was published last September. I am proud of the report, and I spent many hours working with colleagues from across the political divide and with voluntary sector organisations to put it together, so I am keen, where possible, to try to make progress where the report identifies the need to do so.

One of the freedoms of being a Back-Bench Member is the ability to make wide-ranging, ambitious recommendations, and I think recommendation 3 is a very good recommendation. It is already carried out by a number of local authorities, including East Sussex, which I believe has reached an arrangement with almost all the schools in the area to pass the pupil premium—which is given directly to the schools—over to the virtual school head to spend and target on behalf of children in care in the local authority area. That is one of the best ways of ensuring that the pupil premium goes as far as possible for children in care.

Of course, one of the report's other recommendations was for an enhanced pupil premium—pupil premium plus—for looked-after children. I continue to explore and discuss that recommendation in the Department with the Minister for Schools, my right hon. Friend the Member for Yeovil (Mr Laws). There are many other excellent recommendations in the report, which covers a lot of ground, a large number of which we seek to implement, many of which do not require primary legislation.

As a new Minister, I want to make progress on as many of those findings as possible. I recognise that there are particular challenges in relation to how looked-after children can gain the maximum benefit. We have strengthened the wording of the pupil premium terms and conditions of grant letter for 2013-14. We have said that local authorities should ensure that virtual school heads work in partnership with designated teachers in schools on how the pupil premium should be used to benefit a looked-after child's educational needs, as described in his or her personal education plan.

Where looked-after children are in non-mainstream settings, we have strengthened the requirement on virtual schools heads. In 2012-13 the requirement was that they should be consulted on how the pupil premium was to be spent in accordance with a child's PEP; we are now even more explicit by saying that they

"must be involved in decisions about how the amount for looked after children is to be spent to support these pupils in accordance with a child's PEP".

In effect that means a virtual school head has to be involved in decisions on how the pupil premium is spent on behalf of children in care.

My officials have also been working with a group of virtual school heads to distil characteristics of emerging effective practice for the handling of pupil premium arrangements. Based on that work, we published collected good practice in February 2012, and based on the responses of 36 local authorities, it describes six broad principles of effective practice: co-operation, investing time to plan, flexibility, clearly defined procedures, keeping records up to date and, most importantly, building good relationships with all schools.

This has been a useful debate in establishing what virtual school heads have done, can do and, I hope, will do in the future. I hope I have offered sufficient reassurance on both amendments, and I urge the hon. Member for Sefton Central to withdraw his amendment.

Bill Esterson: I thank the Minister for his comments. As he has praised East Sussex for doing what I suggested, I am intrigued that he is not keen on my amendment. I am pleased that he says virtual heads are already involved in decisions on how the pupil premium is spent. Again, my understanding is set out in my amendment, which is very similar to the second half of the amendment tabled by my hon. Friends the Members for Wigan and for Washington and Sunderland West. As he has made it clear that that is his intention, there seems to be no need to press the amendment.

I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 9 ordered to stand part of the Bill.

The Chair: Mr Timpson, novelty always seems to be coming to the Committees that I chair, but I think we will do away with the virtual scoreboard between Ministers and officials in the future. Never mind; we made some progress.

We now move to part 2 of the Bill, which is useful. We are scheduled to finish at 1 pm, so we have a quarter of an hour.

Clause 10

Family mediation information and assessment meetings

12.45 pm

Lisa Nandy: I beg to move amendment 19, in clause 10, page 8, line 20, at end insert—

'unless in the view of the court it is unreasonable to do so'.

We support the attempt to keep as many cases as possible out of court and, to that end, we support clause 10, which will ensure that, in line with David Norgrove's recommendation, all parents will have information about alternative ways to resolve differences before they make an application to court. As with so much of this Bill, our concerns centre around how this will actually work in practice. Amendment 19 is designed to ensure that judges will still have the ability to hear cases without parents having attended a mediation, information and assessment meeting first, even when that is not specified in the family procedure rules.

In his review, David Norgrove said:

"There would also need to be a range of exemptions for those for whom an application to court was urgent, or for whom dispute resolution services were clearly inappropriate at the outset. The regime would allow for emergency applications to court and the exemptions should be as in the current Pre-Application Protocol."

We are particularly concerned that that should apply, for example in cases when there are known to be child abuse allegations or domestic violence.

The pre-application protocol to which David Norgrove referred is fairly brief on these matters, running to just a page and a half. It sets out a fairly narrow definition of domestic violence, saying that the applicant must be aware of

"an allegation of domestic violence against another party and this has resulted in a police investigation or the issuing of civil proceedings for the protection of any party within the last 12 months."

There is an exemption regarding child protection when

"There is current social services involvement as a result of child protection concerns in respect of any child who would be the subject of the prospective application."

On reading the pre-application protocol, it seems that there would be a whole range of important cases that fall outside those rules. We have not yet seen how the Minister intends to amend the family procedure rules, and I would like to see a draft version of those amended rules with some urgency. In fact, for Labour Members, our decision on whether the clause should stand part of the Bill is critically dependent on how the new rules are devised. Nevertheless, however clear and broad the new rules are, they will run into the same problems as the pre-application protocol. As the Children's Commissioner for England says:

"The proposed exemptions do not offer sufficient safeguards to ensure that cases where children are vulnerable to abuse or harm are not inappropriately referred to a"

mediation, information and assessment meeting.

While I am keen that we foresee as many circumstances as possible, it is important that exemptions that are not foreseen, nor indeed foreseeable, and not set out in the guidance can be made when appropriate, because otherwise there is a risk that the clause will cause unnecessary delay, further inflammation of the situation and potential harm to both parents and children. The Magistrates Association also believes that, regardless of that concern, it should be ultimately up to the judge to decide whether the requirements have been met.

I would be grateful if the Minister could confirm when the rules will be published, whether he accepts that there must be a possibility for exemptions that fall outside the rules, as set out in the amendment, and whether the decision about proceeding will ultimately be a judicial one, rather than an administrative one.

The Chair: Just for clarity, I should point out that there are two other amendments to the clause. We will debate amendment 19, and then consider that group separately.

Mr Timpson: I will endeavour to be less virtual and more real, Mr Havard.

Amendment 19 deals with family mediation, information and assessment meetings, which are commonly known as MIAMs. Clause 10 is important as it aims to reduce unnecessary litigation, which I think will be widely welcomed. Every year, the family courts receive about 100,000 applications for an order to settle a dispute about a child following a family breakdown. Many of those cases require judicial scrutiny, but from my decade of practice in the family courts, I know that many others do not and that they could be settled away from court. We agree with the conclusion of the family justice review that more parents should consider using family mediation, which can be quicker, cheaper and less stressful than going to court.

The first step towards mediation involves the prospective parties' attendance at a MIAM, which is an opportunity to find out about mediation and other alternatives for resolving issues rather than going to court. Parties do not have to attend the meeting jointly; they can attend separately, if they wish. We are not compelling parties to use mediation. An assessment of the suitability of mediation will be made by the mediator who conducts the meeting, but only the parties can decide whether to go to mediation.

I am particularly aware of concerns about cases in which there is evidence of domestic violence or abuse, which the hon. Member for Wigan mentioned. Her well-intentioned amendment would require the involvement of the court in every case prior to the start of any relevant family proceedings. At that pre-proceeding stage, the court would presumably have to consider written or oral evidence from the applicant to assess whether it would be unreasonable to require them to attend a MIAM before making a relevant family application.

I think that I can offer the reassurance that hon. Members are seeking. Clause 10 builds on the existing MIAM pre-application protocol that has been in operation since April 2011, so we are not starting with a blank canvas. In moving to a statutory MIAM, we intend to invite the family procedure rules committee, which will make court rules under the powers in the clause, broadly to replicate the exemptions applicable under the existing protocol.

We have made it clear that when, under the current protocol, a party suffers or is at risk of domestic violence, the expectation on them to attend a MIAM should not apply. In fact, we have committed ourselves to widening the domestic violence exemption for existing MIAMs from April 2013 by aligning the exemption with the wider criteria that apply to obtaining legal aid. Those criteria not only extend the list of evidence of domestic violence, but increase the period during which an incident has occurred from the past 12 months to the past 24 months.

I give hon. Members a commitment that we intend to invite the committee to make rules under the clause that enumerate domestic violence as one of the grounds for exemption. We intend that the other grounds for exemption that will be specified in rules will also include, as at present: urgency, where there is a risk to the life, liberty or physical safety of the applicant or their family, or when any delay would cause a risk or significant harm to a child; miscarriage of justice; and when social services are involved.

We are likely to have a draft of the rules by the beginning of next year, in anticipation of Royal Assent. We will look closely at the family procedure rules committee's draft, but that will be subject to further consideration. I hope that I have reassured the hon. Lady, and I invite her to agree that adding another step

[Mr Timpson]

to the MIAM process, which would involve the court in every case at a very early stage—before proceedings have started—would be likely to cause delay.

Lisa Nandy: Given that this Committee will not have an opportunity to look at those rules and how the system will work in practice, will they be put out for consultation before they are finalised?

Mr Timpson: My understanding is that that is a matter for the rules committee following consultation, but I will provide the hon. Lady with a fuller answer to her specific question. I have set out the starting point for the exemptions that already exist, some of which we expect to be moved into the new draft, but the family procedure rules committee will define those exemptions in the draft, which can then be considered further. I therefore urge the hon. Lady to withdraw the amendment.

Lisa Nandy: I am grateful to the Minister for some of his response. There is potentially a large problem, in that we do not know what those exemptions will be, yet we are being asked to endorse a situation that many organisations have warned could cause delay, further inflame the situation and cause harm to parents and children. I urge the Minister to think about that and about when the rules—their content and scope—will be available. We need to ensure that they are as broad as possible to enable judges to hear applications that might fall somewhat outside the narrow definitions in the current protocol. However, I am grateful to him for at least showing willingness to engage with the issue and to take the concerns seriously. On that basis, I am content for now, so I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Lisa Nandy: I beg to move amendment 20, in clause 10, page 8, line 34, at end insert

'"approved mediator" means a mediator who satisfies such training and quality assurance standards as the Lord Chancellor may by regulations specify;'.

The Chair: With this it will be convenient to discuss amendment 21, in clause 10, page 8, line 36, after 'held', insert 'with an approved mediator'.

It is 12.56 pm. We shall adjourn at or around 1 pm, so that will probably be after Lisa Nandy's speech.

Lisa Nandy: I shall take that as an invitation to be brief, Mr Havard.

The amendments address concerns expressed to the Justice Committee in pre-legislative scrutiny that the quality of mediators is too often low. That is particularly relevant in light of mediators' ability to screen for domestic abuse and safeguarding concerns which, as I outlined to the Committee, are critical to the operation of the clause. I have told the Minister that unreported domestic violence is likely to be something that mediators will need to identify. It is not at all inconceivable that one party might seek further mediation in order to perpetuate abuse that has not met the narrow criteria set out in the rules that will accompany the clause.

A high proportion of contested private law cases already involve child abuse or domestic violence allegations. The Children's Commissioner for England points to research indicating that this happens in around 50% of all cases. In addition, she highlights research that the Committee ought to be mindful of: even when no harm had been reported to the court, on further inquiry it was later found to be present in 20% of all cases. It is incredibly important that mediators are skilled at spotting potential problems, including domestic violence, even if no party is alleging that that has occurred, and that is even more pressing in the light of the removal of legal aid for private law cases from April. At present, solicitors make a referral to a mediator, which allows clients to receive legal advice before going into the mediation process. It is therefore often the lawyer—I have seen this myself—who seeks to protect a parent in such instances and highlights concerns.

In Australia, where similar reforms were implemented in 2006 as an attempt to encourage more families to resolve disputes out of court, an evaluation of the reforms found evidence that dispute resolution was occurring in some cases when there were significant concerns about violence and safety within the family. That is why we believe that all mediators ought to be trained in dealing with domestic violence and safeguarding as a minimum, and should have sufficient expertise in dealing with vulnerable children. David Norgrove said:

"There needs to be a high quality service that is also capable of dealing appropriately with any risks to"

the family

"and their children."

He stressed the importance of the mediator being

"trained and accredited to a high professional standard"

so that they can

"assess the most appropriate intervention, including mediation and collaborative law, or whether the risks of domestic violence, imbalance between the parties or child protection issues require immediate referral to the family court".

His point about "imbalance between the parties" is particularly important, as I expect the Minister will know, given his previous profession.

Given that many parents who end up in the family courts are extremely vulnerable, I am worried about the situation, especially in light of the removal of legal aid in most private law cases from April combined with the fact that the 10% of parents—the small minority—who end up resorting to the courts in private law cases are, by definition, involved in the most acrimonious disputes, as they have found themselves unable to resolve them elsewhere. The Magistrates Association, in particular, said that the MIAM process should be evaluated in the light of the removal of legal aid, so I would be grateful if the Minister would tell me whether he will commit to that.

1 pm

I put it to the Minister that there is a risk that the child's voice will be lost unless the mediator is skilled enough to elicit it without harming the child. Risk assessments are currently presented to the court by CAFCASS in private law family proceedings. As he will know, CAFCASS officers are highly skilled in working with children and representing their wishes and feelings.

There is no requirement at all to take children's views into consideration in mediation. Guidance for family mediators sets out that mediators ought to consider that but, as the Children's Commissioner for England points out, the decision of whether to seek children's views should not be left to adults. That should be a right for children, and it is simply not good enough to leave it to adults. That is not just a principled point of view, but an issue of practice, because NAPO, based on its considerable experience, warns that children are less likely to have their views taken into account in out-of-court proceedings. That is backed up by recent CAFCASS research with children in private law proceedings that found that children who were involved in mediation were rarely asked for their views, yet the more that they had been asked, the happier they were likely to be with the outcome. Success in such cases rests on the child having their right to give their views upheld, but there is nothing in the Bill, as far as I can see, that will ensure that that will happen. Will the Minister set out how he envisages that that will happen, especially in cases when children's views have not been sought, but they want their views to be heard?

NAPO points out that the court has a duty to ensure that the child is not exploited by a ruthless parent intent on driving though an adult agenda. That is a risk in extreme cases, but there is also a risk that the voices of vulnerable, confused and conflicted children going through the process will not be heard. The paramountcy principle for children's welfare does not apply to mediation, so will the Minister tell us how he will ensure that an inappropriate burden is not placed on children by courts that are attempting to elicit their feelings and wishes directly without the assistance of an appropriately qualified practitioner?

David Norgrove said:

> "All mediation should be centred on the best interests of the child. This and the other tasks of mediators are demanding. The assessment of risks to the parties in the MIAM is difficult and important. Mediators should at least meet the current requirements set by the LSC. These standards should themselves be reviewed in the light of the new responsibilities being laid on mediators. Mediators who do not currently meet those standards should be given a specified period in which to achieve them."

Does the Minister agree with that? Will he commit to ensuring that those preconditions that David Norgrove set out form part of the background to the clause? How will he ensure that the quality of mediators is high? Will they be accredited and regulated? Will they be subject to Legal Services Commission standards? In my view, and in the view of the Children's Commissioner, that is essential to meet the requirements of article 12 of the convention on the rights of the child and to ensure that children's right to be heard is upheld.

Ordered, That the debate be now adjourned.—*(Anne Milton.)*

1.3 pm

Adjourned till this day at Two o'clock.